

MF 03-6

Tax Type: Motor Fuel Use Tax

Issue: Motor Fuel Distributor – 5 Day Revocation

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 02-ST-0000
v.)	License # 0-000000 0000000
)	Permit # 00-0000
ABC FUEL COMPANY)	Notice of License Revocation
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Neill Schurter, Attorney at Law, for ABC Fuel Company.

Synopsis:

The Department of Revenue ("Department") issued a Notice of License Revocation ("Notice") to ABC Fuel Company ("taxpayer"). The Notice states that the taxpayer's distributor and receiver licenses will be revoked and its blender permit will be cancelled pursuant to section 16 of the Motor Fuel Tax Act (35 ILCS 505/1 *et seq.*) because the taxpayer failed to file a bond in the amount of \$227,900 and failed to pay an assessment in the amount of \$409.49. The taxpayer timely protested the Notice. An evidentiary hearing was held wherein the taxpayer argued that it had paid the assessment

and the Department improperly required the filing of a bond. After reviewing the record, it is recommended that this matter be resolved in favor of the taxpayer.

FINDINGS OF FACT:

1. The taxpayer is a wholesaler of fuel products. The taxpayer purchases fuel products and dispenses and distributes them to home heat accounts and farm accounts. The taxpayer also provides fuel for gasoline stations and operates a gasoline station. The taxpayer has been in business since 1978. (Tr. p. 7)

2. The taxpayer's gross sales per year are approximately 8 to 11 million dollars, which varies depending on the price of gasoline. (Tr. pp. 7-8)

3. The taxpayer collects approximately one million dollars in taxes for the Department each year. (Tr. p. 8)

4. The taxpayer has had its distributor and receiver licenses and its blender permit since 1978. (Tr. p. 8)

5. The taxpayer has never posted a bond with the Department. (Tr. pp. 8-9)

6. The Department required the taxpayer to file a bond in the amount of \$227,900 as a condition of continued licensing. The taxpayer did not provide that bond to the Department. (Tr. p. 11)

7. The taxpayer has paid the final assessment B-408457 totaling \$409.49. (Tr. p. 10)

8. On April 23, 2002, the Department issued a Notice of License Revocation to the taxpayer. The Notice states that the Department intends to revoke the taxpayer's distributor and receiver licenses and cancel its blender permit. (Dept. Ex. #1)

9. The Notice states that the Department is revoking the licenses and canceling the permit because the taxpayer failed to file a bond in the amount of \$227,900 and failed to pay a final assessment, 0-000000, totaling \$409.49. The Notice was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1)

CONCLUSIONS OF LAW:

The Notice issued by the Department states that the taxpayer's distributor and receiver licenses will be revoked and its blender permit will be cancelled pursuant to section 16 of the Motor Fuel Tax Act ("Act"), which provides in relevant part as follows:

"The Department may, after 5 days' notice, revoke the distributor's, receiver's, or supplier's license or permit of any person * * * who violates any provision of this Act or any rule or regulation promulgated by the Department under Section 14 of this Act.

* * *

The Department may, on notice given by registered mail, cancel a Blender's Permit for any violation of any provisions of this Act or for noncompliance with any rule or regulation made by the Department under Section 14 of this Act." (35 ILCS 505/16).

Section 21 of the Act incorporates by reference sections 4 and 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provide that the Department's determination is *prima facie* correct. 35 ILCS 505/21; 120/4, 5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove that the Department's determination is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the Notice was admitted into evidence. As previously stated, the Notice indicates that the Department is seeking to revoke the taxpayer's licenses and cancel the permit because the taxpayer failed to file a bond in the amount of \$227,900 and failed to pay an assessment in the amount of \$409.49. The taxpayer

indicated at the hearing that it has paid the assessment, and the Department does not dispute this fact. The only issue is whether the taxpayer's failure to file a bond should result in the revocation of its licenses and the cancellation of its permit.

The taxpayer maintains that the Department has improperly required the taxpayer to file a bond. The Department asserts that the bond was properly required under section 3 of the Act, which provides in relevant part as follows:

“No person shall act as a distributor of motor fuel within this State without first securing a license to act as a distributor of motor fuel from the Department. Application for such license shall be made to the Department upon blanks furnished by it. The application shall be signed and verified, and shall contain such information as the Department deems necessary. A blender shall, in addition to securing a distributor's license, make application to the Department for a blender's permit, setting forth in the application such information as the Department deems necessary. **The applicant for a distributor's license shall also file with the Department a bond on a form to be approved by and with a surety or sureties satisfactory to the Department conditioned upon such applicant paying to the State of Illinois all monies becoming due by reason of the sale or use of motor fuel by the applicant, together with all penalties and interest thereon.** The Department shall fix the penalty of such bond in each case taking into consideration the amount of motor fuel expected to be sold, distributed and used by such applicant and the penalty fixed by the Department shall be such, as in its opinion, will protect the State of Illinois against failure to pay the amount hereinafter provided on motor fuel sold, distributed and used, but the amount of the penalty fixed by the Department shall not exceed twice the monthly amount that would be collectable as a tax in the event of a sale on all the motor fuel sold, distributed, and used by the distributor inclusive of tax-free sales, use, or distribution. Upon receipt of the application and bond in proper form, the Department shall issue to the applicant a license to act as a distributor. No person who is in default to the State for monies due under this Act for the sale, distribution or use of motor fuel shall receive a license to act as a distributor.” (emphasis added, 35 ILCS 505/3).

The taxpayer argues that this section states that an “applicant” for the license shall file a bond with the Department, so this section does not apply to the taxpayer because the taxpayer is not an “applicant.” The taxpayer already has its license. The taxpayer secured its license 25 years ago and was not required to file a bond at that time. Because

the taxpayer is not currently applying for a new license, the taxpayer believes that the Department has incorrectly required the taxpayer to now file a bond.

I agree with the taxpayer's legal conclusions. The primary rule of statutory construction is to ascertain and give effect to the intention of the legislature. Board of Trustees of Southern Illinois University v. Department of Human Rights, 159 Ill.2d 206, 211 (1994). In order to determine the legislature's intent, the first step is to consider the plain and ordinary meaning of the language of the statute. Thomas v. Greer, 143 Ill.2d 271, 278 (1991). The plain meaning of the word "applicant" is "A person who applies, as for a job." The American Heritage Dictionary, Second College Edition, 1982, p. 121. The legislature must have, therefore, intended the word "applicant" as used in section 3 to mean a person who applies for a license.

The taxpayer is not applying for a license. The taxpayer is not attempting to obtain or secure a license, and the taxpayer is not an applicant as that term is used in section 3. The Department has failed to identify how this taxpayer falls within the meaning of the word applicant as it is used in the statute. There is no requirement under the Act for the taxpayer to renew its license or reapply for its license, so the taxpayer should not have to now file a bond. The Notice of License Revocation should, therefore, be dismissed.

Linda Olivero
Administrative Law Judge

Enter: May 8, 2003